

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

2011-OLR-14

Todd W. Bennett,
Attorney at Law

FIRST MATTER

A couple hired Attorney Todd W. Bennett of Portage to pursue litigation against the seller of the couple's home. Months after the couple's purchase of the home, a driveway and sidewalk on the property had begun to disintegrate. Bennett filed a lawsuit, alleging that the seller had used improper concrete and had improperly installed it and demanded judgment of \$10,000 plus costs and disbursements. The defense filed an answer, and both parties filed motions for summary judgment.

The court granted the defendant's motion for summary judgment and dismissed the lawsuit on grounds that the complaint failed to state a claim upon which relief could be granted. Bennett and the clients disagree on whether he informed them of the dismissal. However, after a discussion with one of the clients, Bennett filed a new lawsuit against the seller and raised three claims relating to the seller having made misrepresentations to the buyers.

Counsel for the defendant informed Bennett of his opinion that if Bennett proceeded, the plaintiffs faced the possibility of having the suit deemed frivolous, exposing them to substantial costs and attorney's fees. The defendant's counsel also told Bennett that the plaintiffs' claims were barred by the economic loss doctrine. Bennett, however, told his clients that adverse counsel's position lacked merit. The defendant's counsel filed an answer and raised numerous

affirmative defenses, including failure to state a claim upon which relief could be granted, failure to join all necessary parties, and the economic loss doctrine. The defense later filed an amended answer and asserted that the lawsuit was frivolous.

The court scheduled a status conference. Bennett wrote to his clients and informed them of the status conference, which was the last communication they received from him. Bennett attended the status conference.

The defendant's counsel subsequently moved for summary judgment and also sent the court and Bennett a proposed scheduling order relating to the motion. The court issued a scheduling order that included a deadline for Bennett to file a response brief. Bennett did not file a response brief or contest the motion for summary judgment, nor did he inform his clients of the motion for summary judgment or of the scheduling order. The defendant's counsel wrote to the court, requesting that the court issue a ruling on the defendant's summary judgment motion and enclosing a proposed bill of costs.

The court issued a judgment in favor of the seller for attorney fees, costs and disbursements in the amount of \$2,296.00. Bennett's clients learned of the case dismissal and the judgment imposed against them by reviewing online court records on the day after the judgment was imposed.

The clients filed a grievance against Bennett, and the grievance was referred for formal investigation. OLR wrote to Bennett and asked him to submit a written response, and in particular, to respond to six questions. Bennett submitted a written response to the grievance, but he did not answer all of the questions raised in OLR's letter. OLR wrote to Bennett and asked him to provide additional information, including an explanation as to why he filed a second lawsuit against the same defendant after the court had previously issued a summary judgment

decision against his client in the first matter. OLR also asked Bennett to provide phone records evidencing that he had called his clients after the first lawsuit was dismissed, as he had asserted. Bennett failed to respond to those questions, although he responded to other questions raised by OLR.

OLR's investigative file was referred to a district committee for further investigation. The district committee's investigator similarly asked Bennett to provide a response relating to whether he had informed his clients of the dismissal of the first lawsuit. Bennett did not respond.

Bennett violated SCR 20:1.1 when, after a lawsuit he had filed on his clients' behalf was dismissed on summary judgment, Bennett refiled a second, similar lawsuit against the same party that resulted in the same outcome of dismissal on summary judgment, with the court imposing costs against the plaintiffs in the second lawsuit, and after adverse counsel in the second lawsuit had warned Bennett that bringing the second lawsuit was likely frivolous. SCR 20:1.1 states, "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Bennett violated SCR 20:1.3, when he failed to respond to the defendant's motion for summary judgment in the second lawsuit, after Bennett had attended a scheduling conference wherein the deadline for responding to the summary judgment motion was imposed and he had received a copy of the scheduling order, and when he failed to request an extension from the court to file his response to the summary judgment motion upon receiving a copy of a letter from adverse counsel to the court, enclosing a proposed bill of costs. SCR 20:1.3 states, "A lawyer shall act with reasonable diligence and promptness in representing a client."

When he failed to inform his clients that the defendant had filed a motion for summary judgment in the second lawsuit on August 24, 2007 or that the court had issued a scheduling order that included a deadline of September 21, 2007 to file a response brief, Bennett violated SCR 20:1.4(a)(3), which states, “A lawyer shall...keep the client reasonably informed about the status of the matter.”

Bennett violated SCR 22.03(6) when he failed to address questions and requests for information in two letters from OLR staff, and he violated SCR 22.04(1) when he failed to answer a letter from the district committee’s investigator.

SECOND MATTER

A man hired Bennett to represent him in a civil case and in two criminal cases. Bennett billed the civil case separately from the criminal cases. Bennett’s attorney fees and costs in the civil case totaled in excess of \$2,100. Bennett received an advanced fee of \$1,500 from the client and applied it to the civil case’s fees and expenses, leaving a balance due of over \$600. Although Bennett’s fees and costs totaled over \$1,000 in the civil matter, Bennett failed to provide a written communication regarding the purpose and effect of the advanced fee to the client as required by SCR 20:1.5(b)(2), which states, “If the total cost of representation to the client, including attorney’s fees, is more than \$1000, the purpose and effect of any retainer or advance fee that is paid to the lawyer shall be communicated in writing.”

In accordance with SCR 22.09(3), Attorney Todd W. Bennett is hereby publicly reprimanded.

Dated this 20th day of December, 2011.

SUPREME COURT OF WISCONSIN

/s/ Timothy L. Vocke
Timothy L. Vocke, Referee